

ESTTA Tracking number: **ESTTA250025**

Filing date: **11/19/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | | | |
|---------|--|-------------|------------|
| Name | Dwell LLC | | |
| Entity | Corporation | Citizenship | California |
| Address | 40 Gold Street San Francisco, CA 94133 UNITED STATES | | |

| | |
|----------------------|--|
| Attorney information | E. Lynn Perry Perry IP Group ALC Four Embarcadero Center San Francisco, CA 94111 UNITED STATES lperry@perryip.com, rzerounian@harveysiskind.com |
|----------------------|--|

Applicant Information

| | | | |
|------------------------|---|------------------------|------------|
| Application No | 77502388 | Publication date | 11/11/2008 |
| Opposition Filing Date | 11/19/2008 | Opposition Period Ends | 12/11/2008 |
| Applicant | LaPene, Jason 1827 Appaloosa Mill Ct. Buford, GA 30519 UNITED STATES | | |

Goods/Services Affected by Opposition

Class 036. First Use: 2005/10/04 First Use In Commerce: 2005/10/04
All goods and services in the class are opposed, namely: Real estate brokerage


Grounds for Opposition

| | |
|--------------------------------------|-----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| Dilution | Trademark Act section 43(c) |

Marks Cited by Opposer as Basis for Opposition

| | | | |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 2452089 | Application Date | 10/08/1999 |
| Registration Date | 05/15/2001 | Foreign Priority Date | NONE |
| Word Mark | DWELL | | |

| | |
|---------------------|---|
| Design Mark | DWELL |
| Description of Mark | NONE |
| Goods/Services | Class 016. First use: First Use: 1999/06/00 First Use In Commerce: 1999/06/00 Magazines in the field of modern home design Class 042. First use: First Use: 2000/01/00 First Use In Commerce: 2000/01/00 Providing On-line magazine in the field of modern home design |

| | | | |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3486397 | Application Date | 04/12/2006 |
| Registration Date | 08/12/2008 | Foreign Priority Date | NONE |
| Word Mark | DWELL | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 036. First use: First Use: 2007/02/01 First Use In Commerce: 2007/02/01 Financial sponsorship of exhibitions, seminars, and conferences in the field of modern design Class 041. First use: First Use: 2007/02/01 First Use In Commerce: 2007/02/01 Arranging of exhibitions, seminars, and conferences in the field of modern design | | |

| | |
|-------------|--|
| Attachments | 75800343#TMSN.gif (1 page)(bytes) 78860261#TMSN.jpeg (1 page)(bytes) Notice of Opposition-DWELL ATLANTA.081117.pdf (5 pages)(30406 bytes) |
|-------------|--|

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|---------------|
| Signature | /s/ |
| Name | E. Lynn Perry |

| | |
|------|------------|
| Date | 11/19/2008 |
|------|------------|

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|---------------|---|------------------------------|
| DWELL LLC, |) | Opposition No.: |
| |) | |
| Opposer, |) | |
| |) | Serial No. 77/502,388 |
| v. |) | Filed: June 18, 2008 |
| |) | Mark: DWELL ATLANTA |
| JASON LAPENE, |) | Published: November 11, 2008 |
| |) | |
| Respondent. |) | NOTICE OF OPPOSITION |
| |) | |

DWELL LLC, a California corporation having a place of business at 40 Gold Street, San Francisco, California, 94133, believes it will be damaged by registration of the mark DWELL ATLANTA ("Applicant's Mark") subject of the above-identified application filed by Jason LaPene ("Applicant"), and hereby opposes the same. As the basis for this Opposition, Opposer alleges:

1. Opposer uses the name and mark DWELL ("Opposer's Mark"), on a nationwide basis, in connection with a variety of goods and services including the following:

Magazines and on-line magazines in the field of modern home design, and modern interior and architectural design;

Financial sponsorship of exhibitions, seminars and conferences in the field of modern design;

Arranging of exhibitions, seminars and conferences in the field of modern design;

Licensing of architectural drawings of modern home designs to others; promoting the architectural designs of others, namely, promoting modern home architectural and interior designs of others;

Providing a website featuring videos, slideshows, podcasts, online journals, polls and advertisements in the field of modern interior and architectural design and sustainable design; and

Arranging contests and competitions in the field of modern architectural, interior and furniture design.

2. Opposer has used Opposer's Mark since at least 1999. Opposer is the owner of Reg. Nos. 2452089 and 3486397 for Opposer's Mark.

3. Opposer's mark is distinctive within the meaning of 15 U.S.C. § 1125(c).

4. Opposer's Mark is famous within the meaning of 15 U.S.C. § 1125(c).

5. According to the records of the United States Patent and Trademark Office, Applicant filed a use-based application to register Applicant's Mark on June 18, 2008, covering "Real estate brokerage" services in International Class 36 ("Applicant's Application"), and it was published on November 11, 2008. In Applicant's Application, use is alleged as of October 4, 2005.

6. The alleged first use date and the filing date for Applicant's Mark are well after the dates of Opposer's first use and application for registration of Opposer's Mark and after Opposer's Mark became famous.

7. The alleged first use date and the filing date for Applicant's Mark are after Opposer's Mark became famous.

8. Applicant has disclaimed the word ATLANTA in Applicant's Application. Thus, the dominant component of Applicant's Mark is identical to Opposer's Mark.

9. Applicant's Mark is likely to confuse actual and prospective customers of Applicant and/or Opposer.

10. Applicant's use and registration of Applicant's Mark will cause dilution of Opposer's Mark by blurring and dilution by tarnishment within the meaning of 15 U.S.C. § 1125(c).

11. For the foregoing reasons, registration of Applicant's Mark would be injurious and damaging to Opposer within the meaning of Section 13 of the Trade-mark Act of 1946 (15 USC § 1063(a)) and would result in injury and damage to Opposer and its business, Opposer's Mark, and Opposer's goodwill.

WHEREFORE, Opposer respectfully prays that this Notice of Opposition be sustained and that Applicant be denied registration of Applicant's Mark sought to be registered in the application herein opposed.

Respectfully submitted,



Dated: November 19, 2008

E. Lynn Perry
Attorneys for Opposer

PERRY IP GROUP ALC
E. LYNN PERRY
4 Embarcadero Center
39th Floor
San Francisco, CA 94111
Telephone: (415) 398-6300
Facsimile: (415) 398-6306

HARVEY SISKIND LLP
RAFFI V. ZEROUNIAN
Four Embarcadero Center, 39th Floor
San Francisco, CA 94111
Telephone: (415) 354-0100
Facsimile: (415) 391-7124

Attorneys for Opposer
Dwell LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2008, I caused the foregoing **NOTICE OF
OPPOSITION** to be served by United States mail, postage prepaid, in an envelope addressed to:

Jason LaPene
1827 Appaloosa Mill Ct.,
Buford, GA 30519

Stephen G. Janoski
Roylance, Abrams, Berdo & Goodman, L.L.P.
1300 19th Street, N.W., Suite 600,
Washington D.C., 20036-1649



E. Lynn Perry